

STRENGTHENING THE ROLE OF FORESTS IN CLIMATE CHANGE MITIGATION THROUGH THE EUROPEAN UNION FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE ACTION PLAN

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ABSTRACT

Forests influence climate change by either increasing or decreasing the atmospheric concentration of greenhouse gases. When unsustainably managed, forests can release more greenhouse gases than they can absorb, intensifying their atmospheric concentration with adverse climate and human health outcomes. Several frameworks and institutional arrangements have been adopted globally to help strengthen political commitment and actions to promote the sustainable management of forests and enhance forests' contribution to climate change mitigation. Nevertheless, the destruction of tropical forests is accelerating at an alarming rate, making it an uphill battle to stop forest sector carbon emissions, limit the global average temperature rise to well below 2°C, and build a sustainable and climate-resilient future for all. The continuous release of forest-related emissions indicates that humanity has fallen short of meeting global forest and climate-related goals and, hence, reiterates the need to develop and apply additional tools to support international cooperation on mitigating forest carbon emissions. Considering deforestation's challenge for voluntary frameworks such as the UN Forest Instrument and REDD+, opportunities/actions beyond non-legally binding agreements and principles must be harnessed promptly. Trade-related measures, such as the Forest Law Enforcement, Governance and Trade Action Plan, are relevant in addressing deforestation. Arguably, the Forest Law Enforcement, Governance and Trade Action Plan provides the most appropriate framework for future regional/global forest law reform.

Keywords: Climate Change; Deforestation; Sustainable Forest Management; REDD+; UN Forest Instrument; FLEGT

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1. INTRODUCTION

Forests influence climate change mitigation and adaptation by either increasing or decreasing the atmospheric concentration of greenhouse gases (GHG), such as water vapour (H₂O), carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), and ozone (O₃).¹ With effective laws that can promote sustainable forest management practices, forests can absorb 2 billion tonnes of CO₂/year globally,² thereby, reducing GHG concentration in the atmosphere, which in the end helps in combatting climate change. When trees are, however, cut down, degraded, or burned, forests become a carbon source by releasing more carbon than they absorb, intensifying the atmospheric concentration of GHG,³ with adverse outcomes for climate, health and well-being, biological diversity, and socio-economic and cultural assets.⁴ These data indicate the critical role of forests in climate change mitigation.

Although 96% of global forests are covered by legislation and policies strengthening their sustainable management,⁵ deforestation and forest degradation, promoted by anthropogenic activities and natural disturbances, linger.⁶ Unfortunately, there has been a disappointing surge in the rate of deforestation, especially in the tropics. Forests in the tropics are disappearing at a rate of 13 million hectares/year,⁷ and this loss is equal to the size of Greece. The loss of tropical forests in 2020 was 12.2 million hectares, which is 12% higher than that which was in 2019.⁸ The carbon emissions released from losing 4.2 million hectares were 2.64 gigatons (Gt) CO₂,⁹ making it an uphill battle to limit the global average temperature rise to “well below 2°C and pursue efforts to limit the temperature increase to 1.5°C.”

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- ¹ Kristin Rypdal and others, ‘Introduction to the 2006 Guidelines’ in Simon Eggleston and others (eds), 2006 *IPCC Guidelines for National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme* (IPCC 2008) 1.5 [IPCC 2008].
 - ² Food and Agriculture Organization, *The State of the World’s Forests 2018 (In Brief) - Forest pathways to sustainable development* (FAO 2018) 15 [The State of the World’s Forests].
 - ³ Government of Canada, *The State of Canada’s Forests: Annual Report 2019* (Government of Canada 2019) 35 [Canada 2019].
 - ⁴ M.R. Allen and others, ‘Framing and Context’ in Masson-Delmotte and others, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (IPCC 2018) [IPCC Special Report] 541.
 - ⁵ Food and Agriculture Organization, *Global Forest Resources Assessment 2015: How are the world’s forests changing?* (2ed) (FAO 2016) 4 [FRA 2015].
 - ⁶ UN Resolution adopted by the Economic and Social Council, E/RES/2017/4, agenda item 18 (k) 3 (2017) [E/RES/2017/4].
 - ⁷ European Commission, ‘Combating tropical deforestation: the REDD+ initiative’ <https://ec.europa.eu/clima/eu-action/forests-and-agriculture/combating-tropical-deforestation-redd-initiative_en> accessed 9 November 2021.
 - ⁸ Mikaela Weisse and Liz Goldman, ‘Primary Rainforest Destruction Increased 12% from 2019 to 2020’ (Global Forest Watch, 31 March 2021) <<https://www.globalforestwatch.org/blog/data-and-research/global-tree-cover-loss-data-2020/>> accessed 13 November 2021.
 - ⁹ *Ibid.*

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Combating deforestation matters for the climate considering the critically important role that forests can play in turning national climate commitments, as signified in the Nationally Determined Contributions (NDC) of State Parties to the Paris Agreement, into action.¹⁰ With projections that the world population will reach 9.8 billion in 2050 and 11.2 billion by 2100,¹¹ meeting future demand for timber products, non-timber forest products and ecosystem services will depend on reform to overturn the current downward trajectory of international forest-related policy and obligations to address new threats from deforestation, especially in the tropics. This paper proposes actions to this end, beyond non-legally binding forest-related policies and obligations.

The current focus of the paper is on trade-related measures such as the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan of the European Union, given deforestation's challenge for non-legally binding forest-related arrangements. The argument proceeds in four parts with a conclusion. Following this introduction, Part II outlines the impacts of deforestation and how these impacts have challenged the current legal framework for addressing global environmental problems such as climate change. Part III then introduces the FLEGT Action Plan, including its demand and supply-side measures. Part IV critically analyzes the theory and practice of FLEGT, arguing that it provides the most appropriate framework for future regional/global forest law reform, followed by conclusive remarks in the last segment.

2. DEFORESTATION AND CLIMATE CHANGE—THE NEXUS OF GLOBAL CONCERN

2.1 Overview of the World's Forests

The Food and Agriculture Organization (FAO) stated that forests occupied 31% of the global land area in 2020,¹² up from 30% that was reported by the United Nations in 2017.¹³ Although 45% of the world's forests are in the tropical domain, over 54 % of the world's forests are owned by the Russian Federation, Brazil, Canada, the United States and China.¹⁴ With regards to its significance, 20% of the global population (around 1.6

¹⁰ Manan Bhan and others, 'Policy Forum: Nationally-determined Climate Commitments of the BRICS: At the forefront of forestry-based climate change mitigation' (2017) 85 *Forest Policy & Economics* 172 [Bhan et al]; R.D. Garrett and others, 'Criteria for Effective Zero-deforestation commitments' (2019) 54 *Global Environmental Change* 135-147.

¹¹ United Nations, 'World population projected to reach 9.8 billion in 2050, and 11.2 billion in 2100' (United Nations, 21 June 2017) <<https://www.un.org/development/desa/en/news/population/world-population-prospects-2017.html>> accessed 13 October 2021.

¹² FAO, *Global Forest Resources Assessment 2020: Main report* (FAO 2020) 14 [FRA 2020].

¹³ UN Economic and Social Council, United Nations strategic plan for forests 2017–2030 and quadrennial programme of work of the United Nations Forum on Forests for the period 2017–2020, E/RES/2017/4, 3.

¹⁴ FRA 2020, *supra*, 10-14.

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billion people) depends on forests for food and livelihoods¹⁵ and 80 % of the world's terrestrial biological diversity is available in forests.¹⁶ Additionally, forests provide US\$ 75–100 billion/year through goods and services¹⁷ and regulate climate and water supplies.¹⁸ Even though forests are home to millions of humans as well as floral and fauna species, a single definition of the term “forests” is missing. Understanding the concept of “forests” can, thus, shed light on why deforestation is a threat to the global environment and human survival.

The Intergovernmental Panel on Climate Change (IPCC) acknowledged that certain countries had defined forests and other wooded lands in terms of (i) legal, administrative, or cultural requirements; (ii) land use; (iii) canopy cover; or (iv) carbon density (essentially biomass density).¹⁹ For instance, the Government of Canada describes forests as a minimum area of land of “1 hectare with tree crown cover of more than 25% and with trees that can reach a minimum height of 5 m at maturity *in situ*.”²⁰ According to FAO, “forest” is primarily a definition of land use – while an area of land can be forest even if it does not have trees on it, agricultural and urban areas with tree cover may be considered as land uses other than forest.”²¹ These definitions share one characteristic – forests contain trees and include plantations, mangrove forests, and freshwater swamps. Forests can be naturally generating, artificially generating or other planted forests such as, among others, mangrove, bamboo, palm, rubber, banana, cocoa, and rubber plantations.

2.2 Forests as a Carbon Pool

IPCC data confirm that, like wood products, soils, and atmosphere, forest biomass is a carbon pool – it can accumulate or release carbon,²² which suggests that forests (including the roots, leaves, trunk, branches, and the bark of trees) are carbon sinks/reservoirs or sources. The IPCC defines a carbon sink as any process/mechanism which can remove GHG, an aerosol, or a precursor of GHG from the atmosphere.²³ According to the IPCC, a forest is a carbon sink if it absorbs more carbon than it releases, which is in

¹⁵ UNDESA, The Global Forest Goals Report 2021 (United Nations Forum on Forests Secretariat 2021) 1 [Global Forest Goals Report].

¹⁶ IUCN, ‘Forests and climate change’ (IUCN, February 2021)
<<https://www.iucn.org/resources/issues-briefs/forests-and-climate-change>> accessed 20 August 2021.

¹⁷ *Ibid.*

¹⁸ Global Forest Goals Report, *supra*, 9.

¹⁹ Robert T. Watson and others, *IPCC Special Report, Intergovernmental Panel on Climate Change, Summary for Policymakers: Land Use, Land-Use Change, and Forestry* (IPCC 2000) 5 [LULUCF].

²⁰ Andrew Dyk and others, Canada’s National Deforestation Monitoring System: System Description (Natural Resources Canada 2015) 1.

²¹ FRA 2020, *supra*, 21.

²² LULUCF, *supra*, 21.

²³ *Ibid.*

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line with the description that forests are “the largest terrestrial storehouses of carbon.”²⁴

Forests can absorb 2 billion tons of CO₂ / annum²⁵ and store about 229 billion tons of carbon in their vegetation²⁶ through sustainable forest management (SFM) practices, which include forest protection, restoration, reforestation, afforestation, and increased efforts to stop forest degradation.²⁷ The IPCC defines afforestation and reforestation in one of two ways: the conversion of non-forested lands to forests; and the activities of regenerating trees immediately after disturbance or harvesting where no land-use change occurs.²⁸ SFM can increase canopy cover, improve carbon density, and enhance forests’ contributions to livelihoods, poverty eradication, and social development.²⁹ According to the United Nations, SFM aims to “maintain and enhance the economic, social and environmental values of all types of forests, for the benefit of present and future generations.”³⁰

The Global Forest Goals Report provides an initial summary of progress towards achieving the six Global Forest Goals and their 26 associated targets (as are contained within the United Nations Strategic Plan for Forests 2030).³¹ This report indicates that total forest expansion by afforestation or natural expansion between 2015 and 2020 was 4.7 million ha/year, with the most extensive forest expansion registered in the Asian continent. The report confirms previous findings that forests are the most significant terrestrial carbon sink, absorbing almost 2 billion tons of CO₂ per year.³² Designing and developing domestic strategies and plans, such as legislative and policy actions to implement climate change and forests commitments, is consequently crucial for achieving the Global Forest Goal 1 – reverse the loss of forest cover worldwide through SFM practices.

Tropical forests have enormous carbon storage opportunities. One example is the forest of the Congo Basin, identified as the most extensive tropical peatland complex. Peatlands are carbon-rich ecosystems: they cover only 3% of the earth’s surface and store 1/3 of soil carbon,³³ and can sequester

²⁴ United Nations Forum on Forests, ‘IDF 2016: UN Press Release -Threats to forests could imperil global freshwater supplies’ (United Nations 21 March 2016)
<<https://www.un.org/esa/forests/news/2016/03/threats-to-forests-could-imperil-global-freshwater-supplies/index.html>> accessed 13 May 2021.

²⁵ Global Forest Goals Report, *supra*, 8.

²⁶ A Baccini and others, ‘Estimated carbon dioxide emissions from tropical deforestation improved by carbon-density maps’ (2012) *Nature Climate Change* 1-4, 1.

²⁷ Forest Goals and Targets, *supra*, 4.

²⁸ LULUCF, *supra*, at 6.

²⁹ *Ibid.*

³⁰ United Nations General Assembly, Resolution adopted by the General Assembly on 22 December 2015A/RES/70/199, Seventieth session, Agenda item 20 [UN Forest Instrument] Article 3.

³¹ The Global Forest Goals Report, 9.

³² *Ibid.*

³³ Greta C. Dargie, and others, ‘Age, extent and carbon storage of the central Congo Basin peatland complex’ (2017) 542 *Nature* 86, 86.

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nearly 60 billion tons of carbon per annum.³⁴ Its carbon-sequestration capacity qualifies it as an essential carbon sink, playing a vital role in managing carbon emissions and contributing to global forest goals through strengthened international cooperation. Tropical forests' potential to absorb carbon and mitigate climate change calls for added reforms to help reduce tropical deforestation.

The United Nations defines the concept of carbon "source" to include any process or activity that releases GHG, an aerosol or a GHG precursor into the atmosphere.³⁵ Forests can be a source of atmospheric carbon if less carbon is absorbed than released. The total global forest carbon stock dropped from 668 Gt in 1990 to 662 Gt in 2010, owing to a loss of forest area.³⁶ IPCC data from 1850 to 1998 shows that approximately 270 (+ 30) Gt C was emitted as CO₂ from the burning of fossil fuel and production of cement, and 136 (+ 55) Gt C as a result of land-use change. These emissions have increased the atmospheric content of CO₂ of 176 (+ 10) Gt C.³⁷ Deforestation and forest degradation are activities that can release GHG.

Deforestation is either the conversion of forest land to non-forest land or a decrease in the "canopy cover or carbon density by a given amount or crossing one of a sequence of thresholds."³⁸ Some 10 million hectares of the world's forests are lost every year,³⁹ shooting down the global forest area by millions of hectares of land. As regards forest ecosystem types, tropical forests are vanishing at a rate of 13 million hectares/year,⁴⁰ nearly the size of Greece. Africa was the continent with the highest net loss of forest area between 2010 to 2020, with most of the losses concentrated in Eastern and Southern Africa, where deforestation grew from 1.35 million ha/year in the 1990s to 1.91 million ha/year in 2010–2020,⁴¹ resulting in a degraded environment with reduced chances of building a sustainable and climate-resilient future for all.

An estimated 16.6 million hectares of the forest of the Congo Basin was lost between 2000 and 2014, with agriculture for the production of subsistence and commercial crops contributing to almost 84% of total forest loss.⁴² The Center for International Forestry Research (CIFOR) places the subregion's deforestation rate at 0.17% between 2000 and 2005, compared

³⁴ UN Environment Programme, 'Six countries, one forest, one future' (UN environment programme 21 March 2019) <<https://www.unenvironment.org/news-and-stories/story/six-countries-one-forest-one-future>> accessed 13 August 2020.

³⁵ United Nations Framework Convention on Climate, 177 UNTS 107 (1992) Article 1(9) [UNFCCC].

³⁶ FRA 2020, *supra*, 51.

³⁷ LULUCF, *supra*, 4.

³⁸ *Ibid.*, 6.

³⁹ Forest Goals Report, *supra*, 8.

⁴⁰ European Commission, 'Combatting tropical deforestation: the REDD+ initiative' <https://ec.europa.eu/clima/eu-action/forests-and-agriculture/combatting-tropical-deforestation-redd-initiative_en> accessed 13 November 2021.

⁴¹ FAO, 2020, *supra*, 15.

⁴² Alexandra Tyukavina and others, 'Congo Basin Forest loss by increasing smallholder clearing' (2018) 4:11 Science Advances 1, 3.

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with 0.9% between 1990 and 2000; and forest degradation at 0.09% between 2000 and 2005, and 0.01% between 1990 and 2000.⁴³ So, while forest degradation in the Congo Basin has increased sharply over time, deforestation has reduced. Similarly, the Amazon forests (the largest tropical forest ecosystem globally) remain under massive pressure from anthropogenic activities. Hundreds of thousands of hectares of its forests are cleared yearly,⁴⁴ perhaps because almost 70 million hectares of its forests are free from adequate supervision by a designated public agency, increasing the risk of continued land-grabbing by, among other users, agribusiness corporations.⁴⁵

Deforestation of tropical forests has increased at a startling rate since the COVID-19 pandemic broke out, as local and Indigenous peoples, as well as urban workers and returning migrants retreat deeper into the forest to seek food, fuel, and protection from the adverse impacts of the pandemic.⁴⁶ According to the Global Forest Watch – an online platform with over 100 organizations that contribute the best available data, expertise, technology, and action that empower people to manage better and protect forest landscapes – tropical nations lost 12.2 million hectares of their tree cover in 2020. Of that, 4.2 million hectares (equivalent to the land area of the Netherlands) occurred within humid tropical primary forests, which are exceptionally valuable for carbon storage and biodiversity.⁴⁷ The loss was 12% higher in 2020 than in 2019 and the second consecutive year that tropical primary forest loss worsened.⁴⁸ With the sudden surge in deforestation in the tropics, meeting the Global Forest Goal to halt deforestation and promote SFM may be challenging. But what is driving deforestation?

2.3 Drivers of Deforestation

Deforestation and forest degradation are driven by political and socio-economic forces interacting at the local to the global levels.⁴⁹ In the *State of the World's Forests 2020* report, the FAO identified subsistence and commercial agriculture (for food, feedstock, fibre and biofuel) as the principal direct drivers of deforestation.⁵⁰ The analysis, which was based on

⁴³ Beranger Tchatchou and others, *Deforestation and forest degradation in the Congo Basin* (CIFOR 2015) 12.

⁴⁴ Maretto, Raian V. and others, 'Spatio-Temporal Deep Learning Approach to Map Deforestation in Amazon Rainforest' (2021) 18 IEEE geoscience and remote sensing letters 771, 771.

⁴⁵ Claudia Azevedo-Ramos and Paulo Moutinhob, 'No man's land in the Brazilian Amazon: Could undesignated public forests slow Amazon deforestation?' (2018) 73 Land Use Policy 125, 125-127.

⁴⁶ The Global Forest Goals Report, 4.

⁴⁷ Mikaela Weisse and Liz Goldman, *supra*.

⁴⁸ *Ibid.*

⁴⁹ Eric F Lambin and others, 'The causes of land-use and land-cover change: moving beyond the myths. Global Environmental Change' (2001) 11:4 Global Environmental Change 261; David L. Carr, Laurel Suter, and Alisson Barbieri 'Population dynamics and tropical deforestation: State of the debate and conceptual challenges' (2005) 27:1 Population and Environment 89.

⁵⁰ FAO, *The State of the World's Forests 2020: Forests, biodiversity and people* (FAO and UNEP 2020) 82 [State of the World's Forests 2020].

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national data for 46 tropical and subtropical countries, shows that large-scale commercial agriculture (primarily cattle ranching and cultivation of soy bean and oil palm) is the most prevalent driver of deforestation, accounting for 40% between 2010-2020.⁵¹ Local subsistence agriculture accounted for an estimated 33% of deforestation, urban expansion for 10%, infrastructure for 10% and mining for 7%.⁵² A 2017 study across 74 tropical countries, covering 2.2 billion hectares of forest land, shows that 17% of the forest loss derived from forest fires, 30% from wood-fuel harvest, and 53% from timber harvest.⁵³ Against this backdrop, agricultural expansion and unsustainable logging and timber harvesting constitute the primary drivers of deforestation, forest degradation and correlated biodiversity loss.

The United Nations Strategic Plan for Forest suggests that forests are at risk of illegal or unsustainable logging, unmanaged fires, dust storms, pollution, sandstorms and windstorms, disease, pests, invasive alien species, and fragmentation and the impact of climate change, which threaten the health of forests and their ability to function as productive and resilient ecosystems.⁵⁴ Moreover, continued rapid population growth and rising per capita income are accelerating the global demand for and consumption of forest products and services.⁵⁵ As the review indicates, these activities continue to happen at alarming rates, putting pressure on forests and threatening forests' health and resilience, underscoring the need to urgently find tools to support international cooperation on mitigating forest carbon emissions.

2.4 Deforestation as a Burning Global Issue

Deforestation is a pressing global issue because it reduces carbon density and weakens fights against climate change. For instance, a reasonable percentage of global GHG emissions have been attributed to deforestation and forest degradation, contributing to nearly 11% of CO₂ emissions⁵⁶ and 20% of anthropogenic CO₂ emissions globally.⁵⁷ A 2017 study across numerous countries in the tropics, covering 2.2 billion hectares of forest land, demonstrates that forest degradation generated nearly 2.1 billion tons of CO₂/year between 2005 and 2010.⁵⁸ On sector-specific emissions, the IPCC has acknowledged agriculture, forestry and other land

⁵¹ *Ibid*, 82.

⁵² *Ibid*.

⁵³ TRH Pearson and others, 'Greenhouse gas emissions from tropical forest degradation: an underestimated source' (2017) 12:1 Carbon Balance and Management 1 [TRH Pearson].

⁵⁴ United Nations, Resolution adopted by the Economic and Social Council United Nations strategic plan for forests 2017–2030 and quadrennial programme of work of the United Nations Forum on Forests for the period 2017–2020, 2017 session, Agenda item 18 (k), E/RES/2017/4, (2017) para. 11.

⁵⁵ *Ibid*, para 12.

⁵⁶ Food and Agriculture Organization, 'REDD+ Reducing Emissions from Deforestation and Forest Degradation' (FAO 2021) <<http://www.fao.org/redd/en/>> accessed 13 September 2021.

⁵⁷ G. R. van der Werf and others, 'CO₂ emissions from forest loss' (2009) 2 Nature Geoscience 737, 737.

⁵⁸ *Ibid*, TRH Pearson.

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use activities as important net sources of emissions of GHG, accounting for roughly 23% of total anthropogenic GHG emissions, especially CO₂, N₂O, and CH₄ in the period 2007-2016.⁵⁹ The IPCC estimated tropical deforestation, degradation and forest fire emissions at 1.39 Gt carbon dioxide equivalence (CO₂e) per year from 1997 to 2009.⁶⁰

Carbon emissions from forest fires are very concerning. Despite the low deforestation rate in the country, forest fires have remained Canada's leading source of emissions. The almost 3.5 million hectares of forest burnt in 2017 by practically 7,000 forest fires generated an estimated 217 million tons as total net emissions of CO₂e.⁶¹ While human activities (clearing forests for pasture or crops, transportation corridors, building, recreation and hydroelectric development) in Canada's forests emitted some 20 million tons (Mt) of CO₂e in 2017, forest fires and other natural disturbances contributed to about 237 Mt CO₂e of released emissions in Canada, resulting in net emissions of 217 Mt CO₂e.⁶² In any given year unless something is done to prevent wildfires, forests will remain a crucial source of CO₂ because of the billions of hectares of the area burned annually.

Global Forest Watch data show that the resulting carbon emissions from losing 4.2 million hectares of humid tropical primary forests in 2020 were 2.64 Gt CO₂, which is equivalent to the annual emissions of 570 million vehicles, slightly over twice the number of vehicles on the road in the United States.⁶³ The net loss of forest area has indeed reduced substantially in the past three decades (between 1990 and 2020, forest area decreased from 32.5 percent to 30.8 %).⁶⁴ Yet, this loss represents an estimated net loss of 178 million hectares of forest, an area about Libya's size,⁶⁵ which released billion tons of GHG, making it a difficult fight to "limit the global average temperature rise to well below 2°C" and pursue efforts to limit the increase to 1.5°C and combat climate change.

2.5 Status of Forest Governance – the Global Context

About 96% of the world's forests are covered by legislation and policies supporting sustainable forest management (SFM).⁶⁶ This comprehensive coverage is perhaps motivated by the growth of international forest-related obligations and policies in response to concerns over deforestation and climate change globally. The UN Strategic Plan for Forests 2017-2030 was created by the Member States of the UN Forum on Forests (UNFF) to serve as a global framework for action at all levels. At the heart of this framework

⁵⁹ Masson-Delmotte et al, *supra*, 8.

⁶⁰ *Ibid.*, 828.

⁶¹ Government of Canada, *The State of Canada's Forests: Annual Report 2019* (Government of Canada 2019) 35 [Canada 2019].

⁶² *Ibid.*

⁶³ Mikaela Weisse and Liz Goldman, *supra*.

⁶⁴ State of the World's Forests 2020, *supra*, 10.

⁶⁵ *Ibid.*

⁶⁶ FRA 2015, *supra*, at 4.

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are six Global Forest Goals and Targets.⁶⁷ Goal 1: reverse the loss of the global forest cover through SFM; Goal 2: enhance forest-based economic, social and environmental benefits; Goal 3: increase significantly the area of protected forests worldwide; Goal 4: mobilize and significantly increase financial resources for the implementation of SFM practices; Goal 5: promote governance frameworks to implement SFM; and Goal 6: enhance cooperation, coordination, coherence and synergies on forest-related issues at all levels. These six goals, though universal, they are voluntary.⁶⁸

This UN Forest Instrument, officially known as the Non-Legally Binding Instrument on All Types of Forests, is a framework for international decision-making on forests. Specifically, it was adopted by the UN General Assembly during its 62nd session on 17 December 2007 to serve as a coherent framework for implementing internationally agreed principles for SFM. The UN Forest Instrument aims to strengthen political commitment to achieve the common global objectives on forests and enhance forests' contribution to achieving the 2030 Agenda for Sustainable Development.⁶⁹ An additional mechanism for promoting SFM is REDD+, which stands for "reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries."⁷⁰ REDD+ is a framework within the UN Framework Convention on Climate Change Convention (UNFCCC)⁷¹ and the Paris Agreement⁷² to reduce GHG emissions from deforestation and forest degradation in developing countries.⁷³

To sum up, the Global Forest Goals, the UN Forest Instrument and REDD+ were designed to minimize unprecedented pressure on forests and the climate system by halting deforestation and promoting conservation, restoration, and expansion of all types of forests. These frameworks, though universally recognized, are legally non-binding, meaning States are not legally obligated to comply with their terms. In the context of REDD+, it is up to those developing countries willing to cut deforestation and enhance SFM to implement the principles it contains. By Decision 14/CP.19, State Parties to the UNFCCC decided that data and information relating to anthropogenic forest-related emissions should be provided voluntarily through a technical annex to the biennial update reports. By this, developing countries can establish a REDD+ mechanism and contribute to climate

⁶⁷ Global Forests Goals Report 2021, *supra*, 1.

⁶⁸ *Ibid.*

⁶⁹ UN Forest Instrument, *supra*.

⁷⁰ United Nations, Decision 1CP/16: The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (2010) at para 70 [Decision 1CP/16].

⁷¹ United Nations, United Nations Framework Convention on Climate, 177 UNTS 107 (1992) [UNFCCC].

⁷² United Nations, Decision 1/CP.21, Adoption of the Paris Agreement, Report of the COP on its 21st session, held in Paris from 30 November to 13 December 2015, addendum, FCCC/CP/2015/10 Add.1 (29 January 2016) (2015) at 2.

⁷³ Decision 1CP/16, *supra*, at para 71.

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change mitigation efforts. The discretionary nature of REDD+ is a logical example of an international agreement lacking mandatory elements.

Although compliance is certainly expected, these forest-related frameworks have failed in meeting Global Forest Goal 1 (Target 3), which calls on governments to, by 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally. The year 2020 was intended to be a year that the world changes the course of deforestation and forestry losses. Even after the UN declared 2020 as “nature super year and 21 March 2020 as *the International Day of Forests*,”⁷⁴ the tropics still lost 12.2 million hectares of tree cover in 2020 alone. Of that, 4.2 million hectares occurred within humid tropical primary forests, which are exceptionally valuable for carbon storage and biodiversity.⁷⁵ Inability to reverse forest loss worldwide and the continuous releasing of billions of tons of carbon indicates that humanity has fallen short of meeting the Global Forest Goal 1 and the Paris Agreement Goal.

The UN Strategic Plan for forests shows that achieving the Global Forest Goals and targets would require bold and transformational actions, including all actors at all levels. The 2018 Special Report on the Impacts of Global Warming of 1.5°C stresses pathways limiting global warming to 1.5°C to include deep reductions in emissions of anthropogenic activities such as agriculture, forests, and other land-use sectors.⁷⁶ Hence emissions from agriculture, forests, and other land uses are undermining global efforts to suppress global warming and climate change. Additional tools to support international and regional cooperation on mitigating forest-related emissions are urgently needed. The European Union Forest Law Enforcement, Governance and Trade (FLEGT) is relevant.

3. THE EUROPEAN UNION FLEGT ACTION PLAN

The EU is a key global importer of commodities associated with deforestation, including palm oil (17%), soy (15%), rubber (25%), beef (41%), maize (30%), cocoa (80%), and coffee (60%).⁷⁷ In addition to agricultural products, the 28 EU member states imported 2.13 million tonnes of wood products from the tropics, with a total value of €2.32 billion, in 2019. It was the second successive year of import growth after declining in 2017,⁷⁸ driven mainly by a recovery in imports of certain timber products from Cameroon,

⁷⁴ United Nations, ‘Turn around deforestation in 2020, the ‘Nature Super Year’, says Guterres’ (Climate and Environment, 21 March 2020) <<https://news.un.org/en/story/2020/03/1059852>> accessed 08 December 2021.

⁷⁵ Mikaela Weisse and Liz Goldman, *supra*.

⁷⁶ IPCC Special Report, *supra*, 95.

⁷⁷ European Commission, ‘Studies on EU action to combat deforestation and palm oil’ <https://ec.europa.eu/environment/forests/studies_EUaction_deforestation_palm_oil.htm> accessed 13 May 2021.

⁷⁸ *Ibid*.

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Brazil, Indonesia, and Malaysia.⁷⁹ It seems only logical to say that this trade was between the EU and countries suffering from illegal logging and poor forest governance.⁸⁰ As the analysis indicates, agricultural expansion (for exports) and illegal/unsustainable logging are the primary contributing factors to deforestation. By importing illegally or unsustainably sourced agricultural goods and timber and timber products from countries with alarming deforestation rates, the EU only exacerbates the problem of tropical deforestation (forest loss abroad) and weakens attempts to achieve global forest and climate goals.

3.1 Understanding the FLEGT Action Plan

An EU study indicates that along with environmental degradation, illegal logging creates social problems, harms legitimate businesses and costs governments EUR 7-13 billion in unpaid fees and taxes/year.⁸¹ In order to solve these problems, EU member states adopted, among other initiatives, the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan and the EU “Communication on Stepping up EU Action to Protect and Restore the World’s Forests.” This later legislation, adopted on 23 July 2019, aims to protect and improve the existing forests’ health and significantly increase sustainable and biodiverse forest coverage worldwide.⁸² This is one of five priorities of the EU to encourage products from deforestation-free supply chains,⁸³ including from tropical nations, such as, among others, Brazil. Brazil is a nation with the lion’s share of the world’s tropical rainforests, and where deforestation is quickening along with threats to the communities that depend on Brazil’s portion of the Amazon rainforest.⁸⁴

In 2003 the EU adopted the FLEGT Action Plan with the goal to address illegal logging through seven different actions: (1) support for timber-producing countries; (2) promote trade in legal timber products; (3) public procurement policies; (4) support for private-sector initiatives; (5) investment and finance; (6) use of legislation; and (7) addressing conflict

⁷⁹ Timber Industry News, ‘Growth in EU tropical timber imports continues in 2019’ <<https://www.timberindustrynews.com/growth-eu-tropical-timber-imports-continues-2019/>>accessed 13 August 2021.

⁸⁰ Divine Foundjem Tita and Peter A. Minang, ‘Community forest governance in Cameroon: A review’ (2018) 23 *Ecology and Society* 34; Michel Bruce and others, *What role do forests and governance play in countries’ nationally determined contributions to the Paris Climate Agreement?: Case study from Cameroon* (Fern 2018) 5.

⁸¹ FLEGT.org, ‘About the EU FLEGT Action Plan’ accessed <<http://www.flegt.org/evaluation>> accessed 20 November 2021.

⁸² European Commission, ‘EU Communication (2019) on Stepping up EU Action to Protect and Restore the World’s Forests’ <https://ec.europa.eu/environment/forests/eu_comm_2019.htm> accessed 13 October 2021.

⁸³ *Ibid.*

⁸⁴ Jean-François Exbrayat, Yi Y Liu and Mathew Williams, ‘Impact of deforestation and climate on the Amazon Basin’s above-ground biomass during 1993-2012’ (2017) 7:1 *Scientific reports*, 1561, 1567; Eduardo Souza-Rodrigues, ‘Deforestation in the Amazon: A Unified Framework for Estimation and Policy Analysis’ (2019) 86:6 *The Review of economic studies* 2713.

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timber.⁸⁵ The FLEGT Action Plan amalgamates demand-side measures and supply-side measures. The demand-side measures include the EU Timber Regulation (EUTR), which forbids forestry operators from placing illegally harvested timber and timber products on the EU market. On the other hand, the supply-side measures consist of the FLEGT licensing system, implemented through the conclusion of Voluntary Partnership Agreements (VPAs) between the EU and non-EU timber-producing nations.⁸⁶ These measures constitute the essential elements of the FLEGT Action Plan.

To elaborate, the EUTR is officially known as *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010*. This legislation took effect on 3 March 2013, and it lays out the obligations of timber operators and traders interested in trading with the EU. According to the European Union Commission, the EUTR is an initiative designed to counter the trade in timber and timber products that were illegally harvested. It does so by prohibiting forest-exporting nations from placing for the “first time of illegally harvested timber and products derived from such timber” on the EU market.⁸⁷ It requires timber traders who place timber products on the EU market for the first time to exercise ‘due diligence’ and keep records of their suppliers and customers.⁸⁸ The due diligence system encompasses specific rules for verifying legality: it “ensures proof of legality through the entire chain of custody from the source to the EU border.”⁸⁹ Hence the due diligence rules obligate operators in VPA countries to carry out a risk-management process to minimize the risk of importing timber or timber products.

A VPA is a trade agreement intended to ensure that timber and timber products from a signatory country that reach the EU market is legal.⁹⁰ VPAs are designed to “build domestic institutions that promote sustainable forest governance and assure the legality of exported timber, and encourage the enactment of legislation that promotes “sustainable” forest governance and assures the “legality” of exported timber and timber products.⁹¹ The EU negotiates a VPA with timber-exporting countries to guarantee that timber and timber products are sustainably and legally obtained. As of 2021, the

⁸⁵ EU FLEGT Facility, ‘What is the EU FLEGT Action Plan?’ (European Forest Institute 2020) <<https://www.euflegt.efi.int/flegt-action-plan>> accessed 13 May 2021.

⁸⁶ FLEGT, ‘FLEGT and VPA countries’ <<https://www.flegtlicence.org/vpa-countries>> accessed 13 July 2021.

⁸⁷ European Union Commission, ‘Timber Regulation’ <https://ec.europa.eu/environment/forests/timber_regulation.htm> accessed 13 May 2021.

⁸⁸ *Ibid.*

⁸⁹ Werner Raza and others, *In-depth Analysis: How can international trade contribute to sustainable forestry and the preservation of the world’s forests through the Green Deal?* (European Union 2020) 10.

⁹⁰ EU FLEGT Facility, ‘What is the EU FLEGT Action Plan?’ (European Forest Institute 2020) <<https://www.euflegt.efi.int/flegt-action-plan>> accessed 19 May 2021.

⁹¹ Christine Overdevest and Jonathan Zeitlin, ‘Experimentalism in transnational forest governance: Implementing European Union Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana’ (2018) 12 *Regulation & Governance* 64, 64.

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European Commission is either negotiating or implementing VPAs with 16 tropical timber-producing countries, with an estimated forest covering the EU land area and contributing to nearly 80% of the tropical timber imports to the EU.⁹²

While Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Laos, Malaysia, and Thailand are still in the negotiation phase of VPAs, Cameroon, Central African Republic, Ghana, Guyana, Honduras, Indonesia, Liberia, Republic of the Congo, and Vietnam have started implementing their VPAs. Indonesia is the lone country that has begun licensing – the first VPA country to issue FLEGT licenses for its timber and timber product destined for the EU market at the point of export.⁹³ By July 2019, Indonesia had issued 104,719 FLEGT paper-based licences, worth USD 2.87 billion in value. The goal is to implement electronic licensing, which, once operational, will enable real-time data reconciliation and streamline licensing procedures.⁹⁴

A FLEGT licence is a document issued by a licencing authority in VPA countries – nations that have ratified a FLEGT VPA with the EU and have an operational FLEGT licencing scheme. A FLEGT licence indicates that a shipment of timber or timber products has been legally produced – that the consignment follows the applicable laws and regulations of the partner nation.⁹⁵ Importantly, FLEGT licences cover all exports of timber products listed in VPAs. They can be issued by designated authorities in VPA countries under a national FLEGT Licensing Schemes and based on a Timber Legality Assurance System (TLAS).⁹⁶ TLAS is a verification system – authenticating the “legality of all relevant wood products. TLAS allows forest enterprises exporting timber from VPA countries to receive FLEGT licenses, thereby assuring them access to the EU timber market.⁹⁷

TLAS comprises (1) a description of the laws and checks that must be complied with before issuing a FLEGT licence; (2) a system to track timber from forest operations to export that excludes timber from illegal sources from the supply chain; (3) a system to verify compliance with the legality elements; (4) “licensing of timber products for export on an approved market participant or individual shipment basis”; and (5) independent monitoring

⁹² EU FLEGT Facility, ‘FLEGT Factsheet: Closing the EU market to illegal timber’ (European Forest Institute 2020) <<https://www.euflegt.efi.int/publications/flegt-factsheets/market-references>> accessed 23 May 2021.

⁹³ FLEGT, ‘FLEGT and VPA countries’ <<https://www.flegtlicence.org/vpa-countries>> accessed 14 May 2021.

⁹⁴ EU FLEGT Facility, ‘Briefing FLEGT licensing: lessons from Indonesia’s experience’ (27 November 2019) <<https://www.euflegt.efi.int/publications/flegt-licensing-lessons-from-indonesia-s-experience>> accessed 14 July 2021.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Sophia Carodenuto and Paolo Omar Cerutti, ‘Forest Law Enforcement, Governance and Trade (FLEGT) in Cameroon: Perceived private sector benefits from VPA implementation’ (2014) 48 Forest Policy and Economics 1 [Carodenuto & Cerutti].

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to guarantee potential parties that the verification system is working as prearranged and maintains its credibility.⁹⁸

TLAS is “built around a definition of legality,” agreed upon through a participatory process involving public and private sector stakeholders. TLAS description includes social, economic, and environmental considerations and incorporates robust safeguards and independent audits (or “periodic evaluation”) in VPA countries with a mandate to apply clear rules and procedures to detect system failures.⁹⁹ The independent auditors report to the VPA joint implementation committees, established by the EU and the VPA partner country. Civil society actors ought to also contribute to the objectives of the VPA by helping in conducting unbiased observation to detect forest law enforcement challenges in VPA countries.¹⁰⁰

4. A CRITICAL ANALYSIS OF THE EU FLEGT ACTION PLAN

In July 2014, eleven years after the FLEGT Action Plan was adopted, the European Community released an independent evaluation report.¹⁰¹ Based on a wide-ranging consultation process undertaken by an external consultant through surveys, stakeholder workshops, targeted interviews, and unsolicited stakeholders’ inputs, the report assessed the achievements and shortcomings of the FLEGT Action Plan.

4.1 The FLEGT Action Plan — Benefits

In addition to its comprehensive, innovative, and future-proof nature, the Action plan has improved forest governance in both VPA and non-VPA countries and has reduced poverty and EU import of unsustainably and illegally harvested timber and timber products.¹⁰² Furthermore, the FLEGT Action Plan has raised global awareness of illegal logging and added substantial value to the global efforts to stop deforestation, forest degradation, and biodiversity loss and tackle climate change.¹⁰³

Like the Global Forest Goals, the UN Forest Instrument, and the REDD+ programme, the FLEGT action plan (through its VPAs) does not impose regulations on timber-producing nations who do not see the advantages of becoming a VPA nation. That notwithstanding, the FLEGT policy obliges VPAs countries (those timber-producing countries that have

⁹⁸ FLEGT Briefing Notes, ‘Forest Law Enforcement, Governance and Trade Guidelines for Independent Monitoring’ (FLEGT March 2007) <<https://www.fao.org/3/ax954e/ax954e.pdf>> accessed 13 May 2021.

⁹⁹ EU FLEGT Facility, ‘Briefing FLEGT licensing: lessons from Indonesia’s experience’ (27 November 2019) <<https://www.euflegt.efi.int/publications/flegt-licensing-lessons-from-indonesia-s-experience>> accessed 13 May 2021.

¹⁰⁰ *Ibid.*

¹⁰¹ EU FLEGT Facility, ‘Independent evaluation of the EU FLEGT Action Plan’ (European Forest Institute 2020) <<https://www.euflegt.efi.int/eu-flegt-evaluation>> accessed 13 November 2021.

¹⁰² EU FLEGT Facility, ‘What is the EU FLEGT Action Plan?’ (European Forest Institute 2020) <<https://www.euflegt.efi.int/flegt-action-plan>> accessed 13 May 2021.

¹⁰³ *Ibid.*

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signed (and ratified) VPAs with the EU) to comply with TLAS – the system to verify compliance with the legality definition’s elements and control the supply chain. It also requires timber operators in VPA countries to conduct a risk-assessment process to help minimize the placing of illegally harvested timber on the EU market. FLEGT’s emphasis on a due diligence system and rules verifying the legality of timber and timber products in VPA countries can help bridge the commitment-compliance gap in global forest governance. The fact that VPAs are legally binding upon ratification differentiates FLEGT from the above non-legally binding forest-related instruments.

Besides, a VPA is not just a trade agreement to ensure that timber and timber products are legally and sustainably sourced. It is anticipated that VPAs will have positive environmental, social and cultural impacts as VPA countries begin issuing FLEGT licenses, which underpin different aspects of sustainable development, including reversing deforestation and forests loss – Sustainable Development Goal (SDG) 16 and combating climate change – SDG 13. According to the European Union, VPAs can address SDG 8 (economic growth), SDG 12 (responsible production and consumption), and SDG 15 (life on land).¹⁰⁴ By bringing many interests (national stakeholders from government, civil society and the private sector) to the table to decide the scope of each VPA, the FLEGT Action Plan ensures that voices of forest-dependent people in VPA countries are represented in environmental decision-making, which is in line with the United Nations’ approach to environmental democracy.¹⁰⁵

The VPA monitoring approach is a source of strength of the FLEGT Action Plan. The EU has established a joint committee of representatives from both the EU and VPA partner countries. This committee comprises civil society organizations mandated to, among others, report non-compliance with forest law, monitor progress on transparency commitments and reforms (legal and institutional), check that VPA conflict resolution mechanisms work, assess VPA impacts, provide information to and monitor the work of an independent auditor, and raise complaints regarding failures in the audit.¹⁰⁶ The realized capacities of VPA processes for advancing principles of good forest governance within the Congo Basin Rainforest region¹⁰⁷ and in moving the FLEGT process forward in Ghana and Indonesia have also been highlighted.¹⁰⁸

¹⁰⁴ EU FLEGT Facility, ‘Factsheet VPAs for SDGs’ (30 March 2016)

<<https://www.euflegt.efi.int/publications/vpas-for-sdgs>> accessed 10 November 2021.

¹⁰⁵ Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26. Rev.1, Principle 10.

¹⁰⁶ EU FLEGT Facility, ‘VPA monitoring’ (European Forest Institute 2020)

<<https://www.vpaunpacked.org/vpa-monitoring>> accessed 19 October 2021.

¹⁰⁷ Marshall A Adams and others, ‘A comparative analysis of the institutional capacity of FLEGT VPA in Cameroon, the Central African Republic, Ghana, Liberia, and the Republic of the Congo’ (2020) 112 *Forest Policy and Economics* 1, 1 [Marshall A].

¹⁰⁸ *Ibid.*, 67.

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4.2 The FLEGT Action Plan – Challenges

While this paper argues that it is well-suited to serve as a template for an international or regional forest treaty (as it adds substantial value to the global efforts to stop deforestation and reduce climate change), it must be highlighted that the EU FLEGT Action Plan is far from perfect. Through a Ghanaian case study, Hansen et al. challenged some of the positive assessments made of VPAs. Albeit helping to establish some fora for forest dialogue and enforcement of social responsibility initiatives, VPA implementation in Ghana has failed “to secure forest sustainability and social equity...[or] change the tenure and benefit-sharing arrangement, which by any standard is inequitable.”¹⁰⁹ Complex political and technical issues in some African countries can constrain VPA processes.¹¹⁰

Additional financial resources are crucial for effective VPA processes and in meeting FLEGT goals, including managing forests, reversing deforestation, and accelerating progress towards achieving climate targets. During its 14th meeting, State Parties to the Convention on Biological Diversity highlighted the need to improve access to, among others, financial resources for the conservation and sustainable use of biodiversity.¹¹¹ Although multilateral sources, including the Forest Carbon Partnership Facility, the Forest Investment Program, UN-REDD Program, Global Environment Facility, and the Green Climate Funds are currently funding national strategies to reduce deforestation and promote the sustainable management of forests,¹¹² a substantial increase in financing is needed for implementing SFM practices.¹¹³

On the one hand, the FLEGT Action plan is criticized as being an EU-based initiative that is transported to other contexts, which could increase the likelihood of different interpretations.¹¹⁴ These usher in the issue of legal transplants, defined as “the moving of a rule or a system of law from one country to another or from one people to another.”¹¹⁵ For “transplanted laws

¹⁰⁹ Christian P. Hansen, Rebecca Rutt, and Emmanuel Acheampong, ‘Experimental or business as usual? Implementing the European Union Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement in Ghana’ (2018) 96 Forest Policy and Economics 75-82.

¹¹⁰ Marshall A, *supra*, 1.

¹¹¹ United Nations, Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity, 14/1. Updated assessment of progress towards selected Aichi Biodiversity Targets and options to accelerate progress para. I.

¹¹² United Nations, Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013, (2013), Decision 9/CP.19: Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, paragraph 70.

¹¹³ United Nations, Report of the Intergovernmental Forum on Forests on its fourth session New York, 31 January-11 February 2000, Paragraph 20.

¹¹⁴ Laura van Heeswijk and Esther Turnhout, ‘The discursive structure of FLEGT (Forest Law Enforcement, Governance and Trade): The negotiation and interpretation of legality in the EU and Indonesia’ (2013) 32 Forest Policy and Economics 6, 7 [Heeswijk & Turnhout].

¹¹⁵ A. Watson, *Legal Transplants: An approach to comparative law* (University of Georgia Press 1993) 21.

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to survive there must be a functionality glue to hold it in place.”¹¹⁶ This suggests that legal transplants need to pass the “functionality” test if the transplant must succeed. On the other hand, Wiersum and Elands argue that “the FLEGT/VPA process should not be considered as constituting a process of linear implementation of the EU policy, but rather as an interface process in which the FLEGT policy is adjusted to local realities.”¹¹⁷ Notwithstanding contrary views, the due diligence requirement can, some have argued, ensure that VPAs, which the EU imposes, is less discriminatory or problematic.¹¹⁸

Some criticism of the FLEGT Action plan points to a shift away from environmental sustainability and public participation towards increasing state dominance in designing and implementing the legality standard. The connection with these three discourses (environmental sustainability, public participation, state dominance) is hierarchical, with law enforcement at the apex, as it is considered an indispensable step to strengthen the economic position of the EU and the VPA country, decreasing deforestation and enhancing environmental consideration.¹¹⁹

Unlike strong preferences observed for transparency and accountability considerations, preferences were relatively weaker for issues regarding civil society participation in the Lao VPA process; land rights of forest communities; and livelihood impacts on small-scale operators, family businesses, and forest communities.¹²⁰ Under the FLEGT Action Plan, power is held by government officials, international development partners and donor community, while the civil society organizations, private sector, and actors at the subnational level are substantially less powerful.¹²¹ Instead of leading to fair outcomes as envisaged, FLEGT has strengthened prevailing inequities by tilting the field to the advantage of more giant corporations over smaller companies.¹²²

The above viewpoints suggest that the EU has not adequately delivered its promise to reform forest governance through “fair and legitimate” participation and representation of state and non-state actors. Limited public participation can infer unequal opportunities to influence the VPA process, which runs contrary to a European Council confirmation that VPAs should fortify land tenure and access rights for indigenous peoples

¹¹⁶ A. Watson, ‘Legal Transplants and Law Reform’ (1976) 92 Law Quarterly Review 80; A. Watson, *Legal Transplants: An Approach to Comparative Law* (Scottish Academic Press 1974).

¹¹⁷ K. Freerk Wiersum and Birgit H.M. Elands, ‘Opinions on legality principles considered in the FLEGT/VPA policy in Ghana and Indonesia’ (2013) 32 Forest Policy and Economics 14, 21.

¹¹⁸ Heeswijk & Turnhout, *supra*, 10.

¹¹⁹ *Ibid.*, 11.

¹²⁰ Sabaheta Ramcilovic-Suominen, Marko Lovric, and Irmeli Mustalahti, ‘Mapping policy actor networks and their interests in the FLEGT Voluntary Partnership Agreement in Lao PDR’ (2019) 118 World Development pp 128.

¹²¹ *Ibid.*

¹²² Ahmad Maryudi and others, ‘A Level Playing Field? – What an Environmental Justice Lens Can Tell us about Who Gets Leveled in the Forest Law Enforcement, Governance and Trade Action Plan’ (2020) 33: 7 Soc & Nat Res pp.859, 869-71.

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and other marginalized communities; and strengthen effective participation of all stakeholders, especially indigenous peoples and other non-state actors in policymaking and implementation.¹²³ Given the significance of public participation in environmental decision-making,¹²⁴ current and future VPA countries should endeavour to promote the participation of civil society and other important stakeholders, including indigenous and other local communities in the VPA implementation and monitoring processes.

The EU's 2014 evaluation of the FLEGT Action plan made several recommendations: the need to (1) deliver support (financial, political and otherwise) to VPA countries in a more flexible manner, involving the private sector, (2) improve the monitoring of FLEGT and give more attention to its communication, (3) shift its focus to non-VPA countries and other international alliances in order to address illegal logging globally, (4) clarify its contribution to the objective of sustainable management of forests, and (5) give due attention to obligations deriving from treaties and other international agreements.¹²⁵

5. CONCLUSIONS

Deforestation and climate change are two global issues that can have substantial environmental, social and economic impacts at the local to the global scale and can only be addressed via international cooperation. Deforestation is promoted by, among others, illegally sourced timber and timber products and (subsistence and commercial) agriculture. These activities can undermine the rights of forest (-dependent) communities and opportunities for good governance, for forests to sequester GHG, and for governments to collect taxes. The continuous and consistent loss of forest cover and release of forest carbon demonstrate how minimally effective international efforts such as the UN Forest Instrument and REDD+ framework have preserved tropical forest resources. Additional tools to support international cooperation on mitigating forest carbon emissions are urgently needed.

Considering deforestation's challenge for soft-law mechanisms (including the UN Forest Instrument and REDD+), one possible action that might knock down some of these barriers and, in turn, accelerate progress towards the 2017 Global Objectives on Forests is to promote sustainable forest management (SFM) through trade rules. Trade-related measures such as the Forest Law Enforcement, Governance and Trade (FLEGT) action plan is relevant. This paper argues that FLEGT provides the most appropriate framework for future regional/global forest law reform – FLEGT aims to address illegal logging and imported deforestation through different actions.

¹²³ Lindsay Duffield and Saskia Ozinga, Making forestry fairer (FERN 2014) 12.

¹²⁴ United Nations, Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26. Rev.1, Principle 10.

¹²⁵ EU FLEGT Facility, 'Independent evaluation of the EU FLEGT Action Plan' (European Forest Institute 2020) <<https://www.euflegt.efi.int/eu-flegt-evaluation>> accessed 09 November 2021.

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FLEGT amalgamates demand-side measures (the EU Timber Regulation) and supply-side measures (the FLEGT licensing system and VPAs). While the demand-side measures criminalize the import of unlawfully and unsustainably harvested timber products into the EU Community, the supply-side measures set out the obligations of timber operators in VPA countries. A VPA is a trade agreement negotiated between the EU and timber-exporting countries. It is legally binding with agreed-upon terms that guarantee that VPA countries' timber products are sustainably and legally obtained. The FLEGT Action Plan is unique because it calls on forest-exporting nations to exercise 'due diligence' before placing timber products on the EU market, encouraging trading from deforestation-free supply chains. The overarching goal of the FLEGT policy is to build institutions in interested tropical countries that promote SFM and ensure the legality of exported timber and timber products.

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